U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JUL 1 1 2008

MSC 05 327 12061

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, New York. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that she entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status.

On appeal, the applicant asserted that the evidence demonstrates her eligibility.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual

circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

On her Form I-687 application the applicant initially stated, at item 16, that she had last entered the United States on July 14, 2005. On an amended page of that application the applicant subsequently stated that her last entry into the United States was on July 14, 2000.

At item 30, the applicant was required to give an exhaustive list of her addresses in the United States since her first entry. The applicant stated that she lived (1) at [redacted] Bronx, New York, from June 1980 to November 1988, and (2) at [redacted], Bronx, New York, from July 2005 until she submitted the Form I-687 on August 18, 2005. The applicant listed no addresses in the United States between November 1988 and July 2005, and no other addresses in the United States.

At item 32 of the Form I-687 application the applicant stated that she left the United States for Ghana in November 1988 and returned to the United States during July 2005. On an amended page of that application, submitted subsequently, the applicant stated that she returned in November 2000.

The pertinent evidence in the record is described below.

The record contains a transcript of questions and answers from the applicant's April 25, 2006 interview before a CIS officer. The applicant stated that she entered the United States during June 1980, and then lived in the Bronx, New York, "on Burnside [for] about 8 years." The applicant stated that she did not leave the United States until July 1988, when she traveled to Ghana, and that she subsequently returned to the United States during 2000. This office notes that the applicant's assertion that she lived at Burnside in the Bronx from June 1980 through 1988 conflicts with her assertion, on the Form I-687, that she lived at [redacted] during that same period.

- The record contains an affidavit dated December 13, 2005 from [redacted] of Bronx, New York. The body of that affidavit states,

1. I have personally known [the applicant] since 1980 when she first came to New York.

2. She was physically present in the US between 1980 and 1988 before she left for Ghana.

3. She came back to New York in 1998 and I have supported her since then.

The nature of the relationship of the applicant and is unknown to this office, other than that he claims to have supported her. This office further notes that the statement of the affiant, that the applicant returned to the United States during 1998, conflicts with the applicant's own assertion, on her amended I-687 and at her April 25, 2006 interview, that she was absent from the United States from November 1988 to July 2000. Because that affidavit, sworn to by a person professing to have knowledge of the applicant's entries into and exits from the United States, conflicts with the applicant's own version of events, it will be accorded no evidentiary weight.

Further, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). Because the applicant has submitted evidence that conflicts with her version of her history of entries into and exits from the United States, the credibility of all of the evidence, and all of the applicant's assertions, is diminished.

- The record contains a photocopy of [redacted]s December 13, 2005 affidavit with some alterations. The amended portions include the affiants address and telephone number, and a change to the body of the affidavit. In the photocopied body of the affidavit, "1998" has been crossed out and "2000" inserted, to indicate that the applicant returned to New York in 2000 and the affiant supported her since then.

  Initially, this office notes that the amended photocopy is not the affidavit to which Mr. [redacted] swore. **The amended photocopy does not qualify as a sworn statement.** Whether [redacted] made the amendments, and whether he is even aware of them, is unclear. Further, the amendment of the affiant's previously sworn testimony as necessary to conform it to the applicant's assertions pertinent to her entries and exits is manifestly unpersuasive. That altered photocopy of [redacted]s affidavit will be accorded no weight.

- The record contains an affidavit dated May 23, 2006 from the body of which states,

  I, stated under penalty of perjury as follows:

> Certify and give consent that, I have been supporting [the applicant] from time to time. My residence is on 2[redacted], Bronx, NY 10453. I started supporting her from 1984 – 1988, when she left to Ghana. I saw [the applicant] physically in the (Bronx) New York.
>
> [The applicant] left in 1988 and came back in 2000.

The nature of the relationship of [redacted] and the application is unknown to this office, except that he claims to have supported her.

The bottom of that affidavit contains the notary's attestation. A stamp indicates that the notary who ostensibly attested to the affidavit is [redacted]r. At the bottom of the attestation is the statement, "My commission expires _____." Someone entered the date of the affidavit, rather than the date of the expiration of the notary's commission, in that space. This suggests that the person who prepared that affidavit is unfamiliar with notaries' attestations, which, in turn, suggests that the ostensibly notarized document was not actually prepared by a notary public. Further, a search of the New York Department of State web page at http://appsext8.dos.state.ny.us/lcns_public/lic_name_search_frm (accessed June 25, 2008) reveals that New York has not commissioned a notary public named [redacted].[1]

Because of the various irregularities in the attestation, that affidavit, standing alone, would be accorded little evidentiary value. Because of the additional scrutiny occasioned by the discrepancies between the other evidence and the applicant's own assertions, that affidavit, pursuant to *Matter of Ho*, 19 I&N Dec. 582, is accorded no evidentiary value.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

With the Form I-687 application, the applicant submitted the December 13, 2005 affidavit from [redacted].

In a Notice of Intent to Deny (NOID), dated April 25, 2006, the director stated that the applicant failed to submit evidence demonstrating her entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director also noted the contradiction between the applicant's assertion that she was absent from the United States from 1988 through 2000 and the December 13, 2005 assertion of [redacted] that the applicant returned to the United States during 1998. The director granted the applicant thirty days to submit additional evidence.

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[1] The web page reveals the existence of a notary named [redacted] but with a different identification number.

In response the applicant submitted the altered version of [redacted]'s affidavit and the affidavit of [redacted], both of which are described above. In the Notice of Decision, dated June 13, 2006, the director denied the application based on the basis stated in the notice of intent to deny; that is the applicant's failure to demonstrate that she entered the United States prior to January 1, 1982 and resided in the United States continuously throughout the period of requisite residence.

On appeal, the applicant stated,

> As regards the Newman Settlement Agreement and supported by affidavits enclosed herewith, I strongly maintain that I qualify for the change of status and therefore should be granted as such. Hence my appeal.

The applicant submitted no additional argument or evidence with that appeal.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The sole evidence upon which the application relies to support that proposition consists of acquaintance affidavits. Based on the irregularities in the evidence, and the contradictions between the evidence submitted and the applicant's own assertions, none of the evidence submitted may be accorded any evidentiary weight.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with no probative value, it is concluded that she has failed to establish entry into the United States prior to January 1, 1982, and continuous residence during the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.